

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

IN RE: CAPITAL ONE CONSUMER) DATA SECURITY BREACH LITIGATION) _____)	MDL No. 1:19md2915 (AJT/JFA) JURY TRIAL DEMANDED
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This Document Relates to the Consumer Cases

**CAPITAL ONE DEFENDANTS’ AMENDED ANSWER TO THE SECOND AMENDED
REPRESENTATIVE CONSUMER CLASS ACTION COMPLAINT**

Defendants Capital One Financial Corporation, Capital One Bank (USA), National Association, and Capital One, National Association (collectively, “Capital One”) jointly submit their Amended Answer and Defenses to the Second Amended Representative Consumer Class Action Complaint [Dkt. No. 971] (the “Complaint”).

ANSWER

The cover page of the Complaint, the first paragraph on page 1 of the Complaint, the paragraphs under the heading “Preamble” on pages 1 to 2 of the Complaint, and headings and subheadings appearing throughout the Complaint do not contain allegations to which a response is required. To the extent those portions of the Complaint contain any allegations to which a response is required, Capital One denies the allegations. In response to the allegations in the numbered paragraphs of the Complaint, Capital One responds as follows:

1. Capital One admits that on July 29, 2019, Capital One issued the “July 29 Form 8-K” cited and referenced in this paragraph, which announced a cybersecurity incident (the “Cybersecurity Incident”) potentially affecting approximately 100 million individuals in the United States and approximately 6 million in Canada. Capital One denies the allegations in this paragraph to the extent they are inconsistent with Capital One’s public disclosures, and Capital One denies any remaining allegations in this paragraph.

2. Capital One admits, consistent with its public disclosures, that the largest category of information accessed in the Cybersecurity Incident was information on consumers and small businesses as of the time they applied for a Capital One credit card product from 2005 through early 2019. That information included personal information Capital One routinely collects at the time it receives credit card applications, including names, addresses, zip codes/postal codes, phone numbers, email addresses, dates of birth, and self-reported income. Capital One further admits that the information accessed in the Cybersecurity Incident also includes certain customer status data (such as credit scores, credit limits, balances, payment history, and contact information), fragments of transaction data from a total of 23 days during 2016, 2017 and 2018, approximately 140,000 Social Security numbers of Capital One credit card customers, and approximately 80,000 linked bank account numbers of Capital One secured credit card customers. Capital One denies the allegations in this paragraph to the extent they are inconsistent with Capital One's public disclosures, and Capital One denies any remaining allegations in this paragraph.

3. Capital One denies the allegations in this paragraph.

4. With respect to the first sentence of this paragraph, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. With respect to the second sentence of this paragraph, which purports to quote a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

5. With respect to the portion of this paragraph that purports to quote a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

6. Capital One admits that at least one putative class member is of diverse citizenship from one defendant and that the Complaint seeks in excess of \$5 million, exclusive of interest and costs. The remaining allegations in this paragraph contain legal conclusions to which no response is necessary. To extent a response is necessary to any remaining allegations in this paragraph, Capital One denies the allegations.

7. Capital One admits that the Court has personal jurisdiction over it in this matter, that Capital One's principal place of business is located within this District, and that Capital One is authorized to and does conduct business in Virginia. The remaining allegations in this paragraph contain legal conclusions to which no response is necessary. To extent a response is necessary to any remaining allegations in this paragraph, Capital One denies the allegations.

8. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph pertaining to parties other than Capital One and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

9. Capital One admits that venue is proper within this District and that Capital One's principal place of business is located within this District. Capital One denies the remaining allegations in this paragraph. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph pertaining to parties other than

Capital One and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

10. Capital One admits that Capital One Financial Corporation is a diversified financial services holding company with banking and non-banking subsidiaries, that Capital One Financial Corporation's principal place of business is in McLean, Virginia, and that Capital One Financial Corporation is incorporated under the laws of Delaware. Capital One denies any remaining allegations in this paragraph.

11. Capital One admits that Capital One, N.A. is a national bank with its principal place of business in McLean, Virginia and that Capital One, N.A. is a wholly-owned subsidiary of Capital One Financial Corporation. Capital One denies any remaining allegations in this paragraph.

12. Capital One admits that Capital One Bank (USA), N.A. is a national bank with its principal place of business in McLean, Virginia and that Capital One Bank (USA), N.A. is a wholly-owned subsidiary of Capital One Financial Corporation. Capital One denies any remaining allegations in this paragraph.

13. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph pertaining to parties other than Capital One and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

14. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph pertaining to parties other than Capital One and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

15. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph pertaining to parties other than Capital One and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

16. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph pertaining to parties other than Capital One and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

17. Capital One denies the allegations in this paragraph.

18. Capital One admits that Plaintiff Hausauer applied for and used a personal Capital One credit card, a business credit card, and a business checking and savings account, and that he provided certain PII to Capital One in connection therewith. Capital One admits that it sent Plaintiff Hausauer a letter dated August 7, 2019. That letter speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that letter, the allegations are denied. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph pertaining to Plaintiff Hausauer and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

19. Capital One admits that Plaintiff Tada applied for and used a Capital One credit card, and that she provided certain PII to Capital One in connection therewith. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph pertaining to Plaintiff Tada and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

20. Capital One admits that Plaintiff Behar applied for and used a Capital One credit card, and that she provided certain PII to Capital One in connection therewith. Capital One admits that it sent Plaintiff Behar a letter dated August 7, 2019. That letter speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that letter, the allegations are denied. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph pertaining to Plaintiff Behar and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

21. Capital One admits that Plaintiff Zielicke applied for and used a Capital One credit card, and that he provided certain PII to Capital One in connection therewith. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph pertaining to Plaintiff Zielicke and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

22. Capital One admits that Plaintiff Gershen applied for and used a Capital One credit card, and that she provided certain PII to Capital One in connection therewith. Capital One further admits that it sent Plaintiff Gershen a September 27, 2019 letter entitled “Update About the Capital One Data Security Incident.” Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph pertaining to Plaintiff Gershen and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

23. Capital One admits that Plaintiff Edmondson applied for and used a Capital One credit card, and that she provided certain PII to Capital One in connection therewith. Capital One is without knowledge or information sufficient to form a belief as to the truth of the

remaining allegations in this paragraph pertaining to Plaintiff Edmondson and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

24. Capital One admits that Plaintiff Spacek applied for and used a Capital One credit card, and that he provided certain PII to Capital One in connection therewith. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph pertaining to Plaintiff Spacek and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

25. Capital One admits that Plaintiff Sharp applied for and used a Capital One credit card, and that she provided certain PII to Capital One in connection therewith. Capital One further admits that it sent Plaintiff Sharp a January 11, 2020 letter entitled “Update About the Capital One Data Security Incident.” Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph pertaining to Plaintiff Sharp and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

26. Capital One admits the allegations in the first sentence of this paragraph. With respect to the remaining allegations in this paragraph, which purport to describe or characterize Capital One’s 2018 Annual Report, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied.

27. Capital One admits that it may collect certain information from consumers and small business that apply for credit from Capital One, including an applicant’s name, date of birth, social security number, address, phone number, income, account-related data, loan details, vehicle or property information, and transaction data. Capital One admits that it uses this

information to provide, maintain, and service customer accounts, including in setting the terms on which Capital One agreed to extend credit. Capital One denies any remaining allegations in this paragraph

28. Capital One admits that it uses consumer information for certain business purposes, including certain marketing, and certain product development and improvement. Capital One denies any remaining allegations in this paragraph.

29. With respect to the allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

30. With respect to the allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

31. Capital One admits that throughout the 1990s and 2000s, its business processes became increasingly digitized. With respect to the remaining allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

32. Capital One denies the allegations in this paragraph.

33. Capital One admits the allegations in the first sentence of this paragraph. With respect to the allegations in the second sentence of this paragraph, which purport to describe or

characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

34. Capital One denies the allegations in this paragraph.

35. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and denies those allegations on that basis.

36. With respect to the first and second sentences of this paragraph, which purport to describe or characterize cited sources, Capital One states that the cited sources speak for themselves, and to the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

37. Capital One admits that, in 2015, it announced that it intended to transition certain computing functions from private data centers to the public cloud. Capital One further admits that, in 2016, it announced that it would make AWS its predominant public cloud provider. Capital One denies any remaining allegations in this paragraph.

38. Capital One denies the allegations in the first sentence of this paragraph. With respect to the second sentence of this paragraph, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

39. Capital One denies the allegations in this paragraph.

40. Capital One denies the allegations in this paragraph.

41. With respect to this paragraph, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied.

42. Capital One admits that, in October 2015, its Chief Information Officer Rob Alexander gave a keynote address at an Amazon-sponsored industry event called “AWS re:Invent 2015.” With respect to the second and third sentences of this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied.

43. Capital One denies the allegations in this paragraph.

44. Capital One denies the allegations in the first, second, third, and fourth sentences of this paragraph. With respect to the fifth sentence of this paragraph, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

45. Capital One denies the allegations in this paragraph.

46. With respect to the allegations in this paragraph that purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

47. Capital One admits that a web application firewall is designed to block unauthorized access while permitting authorized access. Capital One denies any remaining allegations in this paragraph.

48. Capital One denies the allegations in this paragraph.

49. Capital One denies the allegations in this paragraph.

50. Capital One denies the allegations in this paragraph.

51. Capital One denies the allegations in this paragraph.

52. Capital One denies the allegations in the first sentence of this paragraph. With respect to the second sentence of this paragraph, which purports to describe or characterize cited sources, Capital One states that the cited sources speak for themselves, and to the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

53. With respect to this paragraph, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

54. With respect to this paragraph, which purports to describe or characterize cited sources, Capital One states that the cited sources speak for themselves, and to the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

55. With respect to this paragraph, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

56. With respect to the first sentence of this paragraph, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the

extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

57. With respect to this paragraph, which purports to describe or characterize cited sources, Capital One states that the cited sources speak for themselves, and to the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

58. Capital One denies the allegations in the first and second sentences of this paragraph. With respect to the third sentence of this paragraph, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

59. Capital One denies the allegations in this paragraph.

60. Capital One admits that, on July 29, 2019, Capital One filed a report on Form 8-K with the Securities and Exchange Commission. With respect to the alleged content of said report, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegation misquotes, misconstrues, or mischaracterizes that source, the allegation is denied. Capital One denies any remaining allegations in this paragraph.

61. Capital One admits that Paige A. Thompson (a/k/a “erratic”) is the perpetrator responsible for the Cybersecurity Incident, that the Federal Bureau of Investigation (“FBI”) filed a criminal complaint against Thompson alleging that Thompson committed computer fraud and abuse in violation of 18 U.S.C. § 1030(a)(2) in perpetrating the Cybersecurity Incident, and that Thompson was arrested by the FBI on July 29, 2019 and charged by federal prosecutors in the

United States District Court for the Western District of Washington in connection therewith.

With respect to the remaining allegations in the first sentence of this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. With respect to the allegations in the second sentence of this paragraph, Capital One is without knowledge or information sufficient to form a belief as to the truth of such allegations and denies those allegations on this basis. Capital One denies any remaining allegations in this paragraph.

62. Capital One denies the allegations in the first sentence of this paragraph. With respect to the allegations in the second sentence of this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

63. Capital One admits that the intrusion occurred through a misconfigured web application firewall that Capital One was using as part of its operations hosted in the cloud with AWS. Capital One denies any remaining allegations in this paragraph.

64. Capital One admits that, in undertaking to utilize Amazon's cloud services, Capital One worked with certain groups within Amazon. With respect to the allegations in this paragraph that purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

65. With respect to the allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

66. Capital One admits that, in connection with the Cybersecurity Incident, the commands functioned to obtain security credentials on the AWS cloud environment and that these commands were used to extract data. With respect to the allegations in this paragraph that purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

67. Capital One admits that the List Buckets Command was executed on April 21, 2019. With respect to the allegations in this paragraph that purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations and denies the same on this basis.

68. With respect to the allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

69. Capital One denies any remaining allegations in this paragraph.

70. Capital One admits that the intrusion was sophisticated, at least in part because of the hacker's abilities and the manner in which she performed the intrusion. Capital One denies any remaining allegations in this paragraph.

71. Capital One admits that, after discovering the Cybersecurity Incident, it immediately fixed the configuration vulnerability that the hacker exploited. Capital One denies any remaining allegations in this paragraph.

72. With respect to the allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

73. With respect to the allegations in this paragraph, which purport to describe or characterize a cited source or sources, Capital One states that the cited sources speak for themselves, and to the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

74. Capital One denies the allegations in this paragraph.

75. With respect to the allegations in the second, third, and fourth sentences of this paragraph, which purpose to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

76. Capital One denies the allegations in this paragraph.

77. With respect to the allegations in the first sentence of this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

78. With respect to the allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

79. With respect to the allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

80. With respect to the allegations in this paragraph, which purport to describe or characterize cited sources, Capital One states that the cited sources speak for themselves, and to the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

81. Capital One denies the allegations in this paragraph.

82. Capital One denies the allegations in this paragraph.

83. Capital One denies the allegations in this paragraph.

84. With respect to this paragraph, which purports to quote a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

85. With respect to this paragraph, which purports to quote a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

86. With respect to this paragraph, which purports to quote a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

87. Capital One denies the allegations in this paragraph.

88. Capital One denies the allegations in this paragraph.

89. Capital One admits that banks are targets for cyber attacks. Capital One denies any remaining allegations in this paragraph.

90. Capital One denies the allegations in the first sentence of this paragraph. With respect to the second sentence of this paragraph, which purports to describe and quote from a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

91. With respect to this paragraph, which purports to quote a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

92. With respect to the first sentence of this paragraph, which purports to quote from a cited source, Capital One states that the cited source speaks for itself, and to the extent the

allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied.

With respect to the second sentence of this paragraph, which purports to describe and quote from a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

93. With respect to this paragraph, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

94. Capital One denies the allegations in this paragraph.

95. Capital One denies the allegations in this paragraph.

96. With respect to this paragraph, which purports to quote a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

97. With respect to this paragraph, which purports to quote a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

98. With respect to this paragraph, which purports to quote a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

99. Capital One denies the allegations in this paragraph.

100. Capital One admits that there are state and federal laws and requirements and industry standards governing the protection of PII. Capital One denies any remaining allegations in this paragraph.

101. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations. With respect to the second sentence of this paragraph, which purports to quote a cited statute, Capital One states that the cited statute speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that statute, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

102. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations. With respect to the second sentence of this paragraph, which purports to quote or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

103. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph and denies those allegations on that basis. With respect to the second sentence of this paragraph, which purports to quote or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

104. With respect to this paragraph, which purports to quote or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

105. With respect to this paragraph, which purports to quote or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

106. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations. Capital One is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

107. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations. With respect to the second sentence of this paragraph, which purports to quote or characterize cited sources, Capital One states that the cited sources speak for themselves, and to the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

108. Capital One denies the allegations in this paragraph.

109. Capital One admits that it is a participant organization in the Payment Card Industry Security Standards Council. With respect to the remaining allegations in this paragraph, which purport to quote or characterize a cited source, Capital One states that the cited source

speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

110. Capital One denies the allegations in this paragraph.

111. Capital One denies the allegations in this paragraph.

112. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations.

113. With respect to this paragraph, which purports to quote a cited statute, Capital One states that the cited statute speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that statute, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

114. Capital One admits that it collects certain personal information from certain persons and entities. The remaining allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations.

115. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations.

116. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations.

117. The first six sentences of this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations. With respect to the same sentences of this paragraph, which purport to quote and characterize cited regulations, Capital One states that the cited regulations speak for themselves, and to the extent

the allegations misquote, misconstrue, or mischaracterize those regulations, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

118. The first sentence of this paragraph contains legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations. With respect to the same sentence of this paragraph, which purport to quote and characterize cited statutes and regulations, Capital One states that the cited sources speak for themselves, and to the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

119. Capital One denies the allegations in this paragraph.

120. Capital One denies the allegations in this paragraph.

121. Capital One denies the allegations in this paragraph.

122. Capital One denies the allegations in this paragraph.

123. Capital One denies the allegations in this paragraph.

124. Capital One denies the allegations in this paragraph.

125. Capital One denies the allegations in this paragraph.

126. Capital One denies the allegations in this paragraph.

127. Capital One denies the allegations in the first sentence of this paragraph. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the remaining sentences of this paragraph and denies those allegations on that basis.

128. Capital One denies the allegations in this paragraph.

129. With respect to the allegations in this paragraph, which purport to describe or characterize cited sources, Capital One states that the cited sources speak for themselves, and to

the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

130. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph and denies those allegations on that basis. With respect to the second sentence of this paragraph, which purports to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

131. Capital One denies the allegation in the first sentence of this paragraph that “Capital One and Amazon trade on the value of consumers’ PII.” Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegation in the first sentence that “consumers recognize the value of their PII and offer it in exchange for goods and services” and of the allegations in the last three sentences and denies those allegations on that basis. The remaining allegations in this paragraph contain legal conclusions to which no response is necessary. To extent a response is necessary to any remaining allegations in this paragraph, Capital One denies the allegations.

132. With respect to the allegations in this paragraph, which purport to describe or characterize cited sources, Capital One states that the cited sources speak for themselves, and to the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

133. With respect to the allegations in this paragraph, which purport to describe or characterize cited sources, Capital One states that the cited sources speak for themselves, and to

the extent the allegations misquote, misconstrue, or mischaracterize those sources, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

134. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first three sentences of this paragraph and denies those allegations on that basis. With respect to the remaining allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

135. The allegations in the first two sentences of this paragraph contain legal conclusions to which no response is necessary. To the extent any response is necessary to the allegations in the first two sentences of this paragraph, Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations and denies those allegations on that basis. With respect to the remaining allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

136. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first and last sentences of this paragraph and denies those allegations on that basis. With respect to the remaining allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

137. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph and denies those allegations on that basis. With respect to the remaining allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied.

138. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph and denies those allegations on that basis. With respect to the remaining allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

139. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph and denies those allegations on that basis. With respect to the remaining allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

140. Capital One denies the allegations in this paragraph.

141. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph and denies those allegations on that basis. With respect to the remaining allegations in this paragraph, which purport to describe or characterize a cited source, Capital One states that the cited source speaks for itself, and to the

extent the allegations misquote, misconstrue, or mischaracterize that source, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

142. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph and denies those allegations on that basis. Capital One denies the remaining allegations in this paragraph.

143. Capital One denies the allegations in this paragraph.

144. Capital One admits that, as to certain claims in this action, Plaintiffs purport to bring this action as a putative class action on behalf of the “Nationwide Class” described. Capital One denies any remaining allegations in this paragraph.

145. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations.

146. Capital One admits that, as to certain claims in this action, Plaintiffs purport to bring this action as a putative class action on behalf of the “State Subclasses” described. Capital One denies any remaining allegations in this paragraph.

147. Capital One admits that Plaintiffs purport to limit the putative “Nationwide Class” and the putative “State Subclasses” as alleged. Capital One denies any remaining allegations in this paragraph.

148. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations.

149. Capital One denies the allegations in this paragraph.

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157. Capital One denies the allegations in this paragraph.

158. Capital One incorporates its responses to paragraphs 1 through 157 as if fully set forth herein.

159. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations.

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210. Capital One denies the allegations in this paragraph.

211. Capital One denies the allegations in this paragraph.

212. Capital One incorporates its responses to paragraphs 1 through 157 as if fully set forth herein.

213. Capital One admits that its Privacy and Opt-Out Notice is incorporated by reference into the cardholder agreement that each Plaintiff entered into with Capital One. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations pertaining to “class members” and denies those allegations on that basis. Capital One denies any remaining allegations in this paragraph.

214. With respect to this paragraph, which purports to describe or characterize the referenced Notice, Capital One states that the Notice speaks for itself, and to the extent the

allegations misquote, misconstrue, or mischaracterize the Notice, the allegations are denied.

Capital One denies any remaining allegations in this paragraph.

215. With respect to this paragraph, which purports to describe or characterize the referenced Notice, Capital One states that the Notice speaks for itself, and to the extent the allegations misquote, misconstrue, or mischaracterize the Notice, the allegations are denied. Capital One denies any remaining allegations in this paragraph.

216. Capital One admits that each Plaintiff entered into a cardholder agreement with Capital One. Capital One denies any remaining allegations in this paragraph.

217. Capital One is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph and denies those allegations on that basis.

218. Capital One denies the allegations in this paragraph.

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250. Capital One incorporates its responses to paragraphs 1 through 157 as if fully set forth herein.

251. The allegations in this paragraph pertain solely to claims that have been dismissed by the Court's September 18, 2020 Order [Dkt. 879] and, therefore, no response is required. To the extent a response to any allegations in this paragraph is required, Capital One denies the allegations.

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308. The allegations in this paragraph contain legal conclusions that require no response. To the extent a response is required, Capital One denies the allegations.

RESPONSE TO REQUEST FOR RELIEF

The paragraphs under the heading “Request for Relief” on pages 86 through 89 of the Complaint, including the numbered and unnumbered paragraphs, do not contain allegations to

which a response is required. To the extent these paragraphs of the Complaint contain any allegations to which a response is required, Capital One denies the allegations. Capital One denies that Plaintiffs are entitled to any relief whatsoever from Capital One, including but not limited to the relief requested under the heading labeled “Request for Relief” on pages 86 through 89 of the Complaint.

Capital One denies any and all of the allegations in the Complaint that are not expressly herein admitted, or that are neither admitted nor denied for lack of information or knowledge sufficient to form a belief as to the truth or falsity of the allegations.

ADDITIONAL DEFENSES

Without assuming the burden of proof where it otherwise rests with Plaintiffs, Capital One pleads the following defenses:

FIRST DEFENSE

The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

SECOND DEFENSE

Plaintiffs lack standing to assert their claims under Article III of the United States Constitution.

THIRD DEFENSE

Plaintiffs lack prudential standing to assert their claims.

FOURTH DEFENSE

Plaintiffs’ claims fail because they have not suffered any actual, accrued injury or damage.

FIFTH DEFENSE

Plaintiffs’ claims are barred, in whole or in part, by their failure to exercise due care and diligence to avoid loss or minimize any damages allegedly sustained.

SIXTH DEFENSE

The alleged damages suffered by Plaintiffs, if any, were caused by the acts of others for whose conduct Capital One is not, nor has ever been, responsible.

SEVENTH DEFENSE

Plaintiffs' claims are barred because any alleged harm is the result of the intervening and superseding criminal conduct of a third party, not Capital One.

EIGHTH DEFENSE

Plaintiffs' claims are barred by the doctrine of contributory negligence.

NINTH DEFENSE

Plaintiffs' recovery, if any, should be diminished by the proportion of Plaintiffs' own negligence or other fault under the doctrine of comparative fault.

TENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by lack of actual or proximate causation.

ELEVENTH DEFENSE

Plaintiffs' claims are barred because Plaintiffs' alleged damages, if any, were not reasonably foreseeable and because Plaintiffs' alleged damages are supported only with speculation and conjecture.

TWELFTH DEFENSE

Under applicable law, Capital One does not owe a common law duty of care to Plaintiffs.

THIRTEENTH DEFENSE

Plaintiffs' negligence claims are barred because any common law duty of care recognized by the Court cannot be applied retroactively to conduct that occurred before the duty existed or was recognized.

FOURTEENTH DEFENSE

Plaintiffs' negligence claim is barred by the Due Process Clause of the United States Constitution because Capital One lacked notice of an applicable common law duty of care.

FIFTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the economic loss rule and/or the source of duty rule.

SIXTEENTH DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the equitable doctrines of waiver, estoppel, or unclean hands.

SEVENTEENTH DEFENSE

Plaintiffs' claims fail, in whole or in part, to the extent that necessary and indispensable parties to this action have not been joined under Federal Rule of Civil Procedure 19, prohibiting this action from proceeding in equity and good conscience among the parties presently before the Court. Capital One specifically reserves the right to implead such parties.

EIGHTEENTH DEFENSE

Capital One at all times acted in good faith and in compliance with applicable laws and regulations.

NINETEENTH DEFENSE

To the extent Plaintiffs seek exemplary or punitive damages, such awards are prohibited here under the Fifth and Fourteenth Amendments to the United States Constitution.

TWENTIETH DEFENSE

To the extent Plaintiffs seek exemplary or punitive damages, the Complaint is devoid of facts sufficient to constitute a cause of action allowing for such an award.

TWENTY-FIRST DEFENSE

Plaintiffs are barred from recovering in excess of any statutory caps on punitive damages that may apply in this action, including, but not limited to, under Fla. Stat. § 768.73, Tex. Civ. Prac. & Rem. § 41.008, and Va. Code § 8.01-38.1.

TWENTY-SECOND DEFENSE

Plaintiffs fail to identify a factual or legal basis for their claim for attorneys' fees.

TWENTY-THIRD DEFENSE

Plaintiffs' claims may not properly be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure.

TWENTY-FOURTH DEFENSE

Plaintiffs' claims under non-Virginia consumer protection or deceptive trade practice laws are barred by the Dormant Commerce Clause and the Due Process Clause of the United States Constitution.

TWENTY-FIFTH DEFENSE

Some or all of Plaintiffs' claims under non-Virginia state consumer protection or deceptive trade practice laws are barred because those laws do not apply to conduct occurring in Virginia.

TWENTY-SIXTH DEFENSE

Plaintiffs' claims fail, in whole or in part, for failure to satisfy conditions precedent to suing under the laws on which Plaintiffs base some or all of their claims, including but not limited to Plaintiffs' failure to provide requisite written demands.

TWENTY-SEVENTH DEFENSE

Plaintiffs' claims fail, in part, because Plaintiffs cannot maintain claims in a representative capacity under their state-law statutory causes of action.

TWENTY-EIGHTH DEFENSE

Plaintiffs' claims fail to the extent the statutes or regulations upon which Plaintiffs rely do not provide individuals with a private right of action, including but not limited to Section 5 of the Federal Trade Commission Act and any "similar state statutes," which provide no private right of action or basis for any negligence *per se* claim.

TWENTY-NINTH DEFENSE

Plaintiffs' Complaint fails to plead claims of fraud with particularity and fails to plead that Capital One acted with scienter.

THIRTIETH DEFENSE

Some or all of Plaintiffs' claims are barred, in whole or in part, by the doctrine of set off to the extent Plaintiffs are indebted or liable to Capital One.

THIRTY-FIRST DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the applicable statute of limitations.

RESERVATION

Capital One expressly and specifically reserves the right to amend this answer to add, remove, or modify defenses based on legal theories, facts, and circumstances that may or will be divulged through discovery and/or further legal analysis of Plaintiffs' positions in this litigation.

JURY DEMAND

Capital One demands a trial by jury on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

* * *

THEREFORE, having fully answered Plaintiffs' Complaint, Capital One requests that the Complaint be dismissed with prejudice; that judgment be entered in Capital One's favor; that costs

be taxed against Plaintiffs; and that Capital One be awarded such additional relief as the Court deems just and proper.

Dated: May 7, 2021

Respectfully submitted,

/s/ David L. Balser

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Susan M. Clare (*pro hac vice*)
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mohsin.reza@troutman.com

Counsel for Capital One

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2021, I caused the foregoing document to be filed with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to all counsel of record.

/s/ David L. Balser

David L. Balser